

In re Application of: Poplawski *et al.*
Application No.: 10/637,161
Atty Docket No.: 36400.35US2

Examiner: T. Lewis
Art Unit: 3681

REMARKS

By this response, in the Present Application, no Claims have been cancelled, and originally-submitted Claims 1 and 9 have been amended. As such, Claims 1-22 remain pending in the Present Application.

In the Office Action, Examiner notes that the Patent Number of the priority document should be noted in the Present Application. By amendment, above, Applicants have addressed this notation.

In the Office Action, Claims 1-3 were rejected under 35 U.S.C. § 102(e) as being anticipated by Boyer *et al.*, US. Patent Application No. 2002/0170384. Also in the Office Action, the Examiner rejected, under 35 U.S.C. § 103(a), Claims 5, 7-11 and 14-17 as being unpatentable over Boyer in view of Hauser *et al.*, U.S. Patent No. 6,223,531; Claims 4 and 6 over Boyer in view of Yoshina *et al.*, U.S. Patent No. 6,131,316; Claim 18 over Boyer in view of Hauser and further in view of Yoshina. Additionally, the Examiner rejected Claims 1-8 and 10-22 under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-3, 18-20, 28-30, 37-40, 42-45, 48-53 and 58-60 of Poplawski, U.S. Patent No. 6,651,529. Finally, the Examiner noted that Claims 12-13 and 19-22 would be allowable upon the filing of a terminal disclaimer and, where applicable, if rewritten in Independent form, including all of the limitations of the base, and any intervening, Claims.

It is well settled that a rejection under 35 U.S.C. § 102 requires a single reference to disclose each and every element set forth in a claim under consideration. In this regard, all of the limitations of a claim, including functional limitations, must be considered when weighing the differences between the claimed invention and the single cited reference. Meanwhile, a rejection under 35 U.S.C. § 103 requires some suggestion or motivation to modify one or more cited references to arrive at the claimed invention. When considering obviousness, it is impermissible to use hindsight, or the Applicants' disclosure, to provide the necessary suggestion or motivation.

It is submitted that the cited references neither disclose nor suggest each and every limitation set forth in the Claims at issue. By way of example, none of the cited

In re Application of: Poplawski *et al.*
Application No.: 10/637,161
Atty Docket No.: 36400.35US2

Examiner: T. Lewis
Art Unit: 3681

references, alone or in combination, disclose the claimed vehicle of Independent Claim 1, which comprises a vehicle frame having at least one vertically oriented side frame member, a transmission housing mounted to a vertical face of the side frame member, a hydrostatic transmission mounted in the transmission housing and comprising a hydraulic pump and hydraulic motor connected through a hydraulic circuit and an axle shaft driven by the hydraulic motor and extending perpendicular to the vertical frame member. Similarly, none of the cited references, alone or in combination, disclose the claimed vehicles of Independent Claims 1 and 9.

Specific to Independent Claims 1 and 9, *Boyer*, rather than disclosing the claimed vehicle, discloses a differential-equipped transaxle. Among other elements, *Boyer* discloses a transaxle including a vehicle frame having at least one vertically-oriented side frame member and a transmission housing mounted, via an axle drive unit, to the frame member. See *Boyer*, generally, at FIG. 1.

However, *Boyer* does not teach a transmission housing mounted to a vertical face of the vertically-oriented side frame member, as is required by pending Independent Claims 1 and 9. Specifically, the disclosure in *Boyer* concerns a hydrostatic transaxle, such as for a lawnmower, which is mounted to a pair of "substantially C-shaped" rails. See *Boyer*, paragraph [0044] (In FIG. 1, the substantially C-shaped rails are illustrated as Reference Numerals 24 and 26). Thus, it cannot be said that *Boyer* discloses each and every limitation of pending Independent Claims 1 and 9. Further, because the disclosure in *Boyer* only discusses the use of an independent substantially C-shaped rail, and neither contemplates the use of any other type of rail nor discloses any element equivalent to a vertical rail frame, there is no suggestion, implicit or express, within *Boyer* to arrive at the Present Invention.

With reference to the § 103(a) rejections, Applicants submit that, for the reasons stated above concerning *Boyer*, neither the combinations of *Boyer* and *Hauser*, *Boyer* and *Yoshina* nor *Boyer*, *Hauser* and *Yoshina* discloses a transmission housing mounted to a vertical face of the side frame member, as is required by Independent Claims 1 and 9. Thus, it cannot be said that the combined references suggest each and every limitation set forth in the claims at issue.

In re Application of: Poplawski et al.
Application No.: 10/637,161
Atty Docket No.: 36400.35US2

Examiner: T. Lewis
Art Unit: 3681

Concerning the rejection of Claims 1-8 and 10-22, under the judicially-created doctrine of obviousness-type double patenting, Applicants submit a Terminal Disclaimer herewith. This Terminal Disclaimer is in compliance with 37 CFR 1.321(c).


Applicants submit that any amendments to the Claims that were not made in response to the Examiner's objections or rejections were made for non-statutory purposes. Accordingly, any such amendments should not limit the scope of the present invention, which is to be given the full breadth of the claim language and any equivalents thereof.

Based on the foregoing Amendments and Remarks, the present Application is considered to be in condition for allowance. Such action on the part of the Examiner is respectfully requested. If the Examiner feels a telephonic conference would expedite the allowance of the present Application, it is suggested the Examiner contact the undersigned Attorney.

It is further believed that no fee is due for the filing of this Response. If such is not the case, any fee due may be charged to our firm's Deposit Account No. 502261.

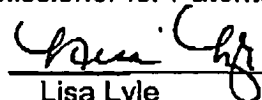
Respectfully submitted,

Date: 02 August 2004


Timothy M. Morella
Reg. No. 45,277
Attorney for Applicants

NEAL, GERBER & EISENBERG LLP
2 North LaSalle Street
Chicago, Illinois 60602.3801
312 269 8000

Certificate of Transmission under 37 CFR § 1.8: The undersigned hereby certifies that this document is being transmitted to the Commissioner for Patents via facsimile at 703 872 9326, this 2nd Day of August, 2004.

By: 
Lisa Lyle

NGEDOCs: 1046236.2